



Zachary E. Colbeth
zcolbeth@cofolaw.com

June 17, 2020

By Email and U. S. Mail

Commissioner Nancy Reyering (President)
Members of the Board
San Mateo County Harbor District Board of Commissioners
PO Box 1449
El Granada, CA 94108
Tel: (650) 583-4400
Email: nreyering@smharbor.com

Re: *Written Demand to "Cure or Correct" Brown Act Violations*

Dear President Reyering and Board Members,

We are writing on behalf of John Ullom and would like to bring your attention to what we believe were multiple violations of the Ralph M. Brown Act, Government Code sections 54960 *et seq.* (the "Brown Act") by the San Mateo County Harbor District Board of Commissioners (Board) at its Special Meeting on June 4, 2020. These violations may jeopardize the finality of the Board's action taken at that meeting and may subject the Board to various other consequences under the Brown Act. We write this letter to respectfully demand, pursuant to Government Code section 54960.1, that the Board "cure or correct" its unlawful actions taken on June 4, 2020.

Specifically, the nature of the violations is as follows. First, at the Board's Special Meeting on June 4, 2020, the Board failed to comply with Government Code section 54954.3(a). Government Code section 54954.3(a) states, in relevant part, that "[e]very agenda for regular meetings *shall* provide an opportunity for members of the public to directly address the legislative body *on any* item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body[,]" and that "[e]very notice for a special meeting *shall* provide an opportunity for members of the public to directly address the legislative body concerning *any* item that has been described in the notice for the meeting before or during consideration of that item." Gov. Code § 54954.3(a) (emphasis added). This is in line with the purpose and intent of the Brown Act, which "serves to facilitate public participation in *all phases* of local government decisionmaking and to curb misuse of the democratic process by secret legislation of public bodies." *See Int'l Longshoremen's & Warehousemen's Union v. Los Angeles Exp. Terminal, Inc.* (1999) 69 Cal.App.4th 287, 293 (citation omitted; emphasis added); *see also Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 555.

The Board violated Government Code section 54954.3(a) when it prevented Mr. Ullom (and several others) from being afforded his full time period of public comment during the June 4, 2020 Special Meeting regarding Resolution 20-08 and the issue of censure against Commissioner Sabrina Brennan. Rather than provide Mr. Ullom with his full public comment period, the Board instead cut Mr. Ullom (and others) off before his time had expired, in violation of his rights under the Brown Act and Section 54954.3(a), which specifically states that members of the public *shall* be given an opportunity to address the Board on *any* item described in the meeting notice (including during a “special meeting”). Because Mr. Ullom’s public commentary during the June 4, 2020 Special Meeting addressed the issue of Commissioner Brennan’s potential censure – including providing the public with historical background information and examples of why he opposed such a censure action by the Board and why he believed the censure action was in fact being taken against Commissioner Brennan for ulterior motives – Mr. Ullom was entitled to his full public comment period. Moreover, even if Mr. Ullom was simply making a general public comment to the Board, allowing him his full allotted time would still be mandated by the Brown Act.¹ *See Chaffee v. San Francisco Library Com.* (2004) 115 Cal.App.4th 461, 469 (explaining that the Brown Act requires that a “general public comment period be provided *per agenda*, in addition to public comment on each agenda item as it is taken up by the body” [emphasis in original]). The Board’s decision to cut Mr. Ullom’s time short (as well as others) was thus improper and a clear violation of Section 54954.3(a) of the Brown Act.

Additionally, in further violation of the Brown Act, the Board’s action in stifling and suppressing Mr. Ullom’s (and others’) public comment period also violated his rights under Section 54954.3(c) of the Brown Act. Government Code section 54954.3(c) states the following: “The legislative body of a local agency *shall not prohibit public criticism* of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.” Gov. Code § 54954.3(c) (emphasis added). Here, though, that is exactly what the Board did when it prevented Mr. Ullom from completing his public commentary on the issue of Commissioner Brennan’s censure – attempted in a lawful public forum to prohibit Mr. Ullom from publicly criticizing the Board’s decision to constitute the special meeting in the first place to vote on censuring Commissioner Brennan and from actually voting to censure Commissioner Brennan (which the Board subsequently did). By stark contrast, the Board allowed others with differing viewpoints (particularly those who supported the censure action) to voice their opinions fully and without interruption (*i.e.*, without being cut off prior to the expiration of their fulltime period of public comment). This was a violation of the Brown Act and of Mr. Ullom’s First Amendment rights. *See* Gov. Code § 54954.3(c); *see also Griffin v. Bryant* (D.N.M. 2014) 30 F.Supp. 3d 1139, 1185-1200; *Baca v. Moreno Valley Unified Sch. Dist.* (C.D. Cal. 1996) 936 F.Supp. 719, 732-735.

Based on the foregoing, Mr. Ullom hereby demands, in accordance with Government Code section 54960.1, that the Board immediately cure and correct its unlawful actions as follows: 1) rescind and declare null and void its action, taken on June 4, 2020, to censure Commissioner Brennan; 2) provide Mr. Ullom (and members of the

¹ Notably, the Board also did not allow for any general public comments at a June 15, 2020 Special Meeting.

President Nancy Reyerling
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public), after notice of which is properly included on a lawful posted agenda, with a full and uninterrupted opportunity to comment on any potential censure of Commissioner Brennan and any ancillary background information which may help the public and Board in understanding the issue; 3) acknowledge that the reason Mr. Ullom and others were denied a full public comment was to avoid criticism of the Board's actions, in violation of the Brown Act; 4) commit to refraining from improperly preventing members of the public from lawfully providing the Board with public comments (both general and agenda-specific) at all future Board meetings; and 5) otherwise "cure or correct" its unlawful actions taken on June 4, 2020 (and June 15, 2020). The Board's actions constitute a significant violation of the Brown Act and must be remedied accordingly. As provided by Section 54960.1, the Board has 30 days from the receipt of this demand to either cure or correct the challenged action or inform me of its decision not to do so. If the Board fails to take the proper remedial actions necessary in this matter, Mr. Ullom will have no choice but to commence a legal action against the Board in order to enforce his rights and to obtain a judicial determination that the Board committed violations of the Brown Act. Such a judicial determination will of course have further substantial legal, economic, and political consequences for the Board, its members, and others affiliated with the Board and its unlawful actions (including potential payment of court costs and reasonable attorney fees in this matter, pursuant to Government Code section 54960.5). We hope that the Board will find its way to correcting course and to avoiding any such costly litigation.

We look forward to hearing from you soon.

Very truly yours,

CANNATA, O'TOOLE, FICKES & OLSON LLP



ZACHARY COLBETH

ZC:hs

cc: Commissioner Virginia Chang Kiraly (vchang-kiraly@smharbor.com)
Commissioner Tom Mattusch (tmattusch@smharbor.com)
Commissioner Sabrina Brennan (sbrennan@smharbor.com)
Commissioner Edmundo Larenas (elarenas@smharbor.com)
Board Administrator Debbie Gehret (dgehret@smharbor.com)